Congress of the United States Washington, DC 20510

March 15, 2013

The Honorable Seth D. Harris Acting Secretary US Department of Labor 200 Constitution Ave., NW Washington, DC 20210

Dear Acting Secretary Harris:

As you know, prior to the 2010 tragedy at the Upper Big Branch Mine in West Virginia, we voiced serious concerns about the massive and growing increase in the case backlog at the Federal Mine Safety and Health Review Commission (FMSHRC). Not only was this backlog weakening the deterrence value of monetary penalties, but it also had the effect of undermining the Pattern of Violations process in place at the time, as well as interfering with penalty assessments for repeat violations.

To address this growing backlog, Congress appropriated up to \$22 million in the Supplemental Appropriations Act for Fiscal Year 2010 to assist the Mine Safety and Health Administration (MSHA), FMSHRC, and the Solicitor's Office. This allowed these three agencies to staff up with additional lawyers, administrative law judges and support staff. Congress again prioritized the reduction of this backlog in Fiscal Years 2011 and 2012 by sustaining funding in the Solicitors Office for the additional 74 full time employees, and even allowed the transfer of \$3 million from MSHA to the Solicitor's Office to further supplement backlog reduction efforts.

It has now come to our attention that the Solicitor's Office has chosen to close or downsize three of the offices that were stood up specifically to address this chronic backlog of mine safety cases by June 1, 2012. This will result in a reduction of staff from 74 FTEs to just 44 FTEs. In addition to the loss of these 30 positions, we understand that the remaining staff assigned to the backlog reduction project may also be subject to furloughs.

We recognize that substantial progress has been made in the initial group of cases targeted for backlog reduction, and that the overall size of the backlog has been reduced. However, there remains a significant ways to go. Recent data indicates that it takes an average of 498 days for each case to be dispositioned, which is more than double the historic average of approximately 200 days. It is too soon to declare mission accomplished.

While the sequester is imposing hardships on multiple agencies within DOL, these staff cuts to the backlog effort are plainly disproportionate relative to other work carried out in the Solicitor's Office. We find this decision to be unacceptable and instead we believe the Solicitor's Office should apply only proportional cuts to this program activity, so that efforts can be maximized to reduce the backlog of mine safety cases.

Therefore we ask that you reevaluate the decision to shutter the Atlanta and Arlington Offices and downsize the Denver Office that were created to dispense with the mine safety backlog, and to provide us with a plan detailing the actions you will be taking to continue to make progress in reducing the backlog of cases in this mission critical activity.

Sincerely,

Senator John D. Rockefeller IV

Congressman George Miller

Senator Joe Manchin III

Congressman Nick Joe Rahall

Cc: Patricia Smith, Solicitor of Labor